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Finalization and approval of the additional international legal instrument against trafficking in persons, especially women and children

Proposals and contributions

Addendum

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* A/AC.254/35.

II. Proposals and contributions

Belgium*

[Original: French]

Preamble

1. The following new preambular paragraph should be added:

"*Bearing in mind* that the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others[1] emphasizes, *inter alia*, that prostitution and the accompanying evil of trafficking in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,"

Article 13: Saving clause

Paragraph 1

2. The words "and the principle of non-refoulement as contained therein" should be added to the end of paragraph 1, thereby making the paragraph identical with article 15 *bis* of the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (the "Migrants Protocol").

China**

[Original: English]

New article

After article 10, add a new article to read as follows:

"*Article (...)*
"*Measures to eliminate trafficking in women and children [persons]*

"1. States Parties shall, through bilateral and multilateral cooperation, adopt such measures as they deem effective to eliminate the consumer market that nurtures transnational trafficking in women and children [persons, especially women and children].

"2. States Parties shall ensure the strengthening of international cooperation to eliminate the root causes of the vulnerability of women and children [persons, especially women and children,] to such trafficking, such as poverty and underdevelopment."

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* Amendment previously issued in document A/AC.254/L.201.

** Amendments previously issued in document A/AC.254/5/Add.25.

[1] United Nations, *Treaty Series*, vol. 96, No. 1342.

Holy See*

[Original: English]

Article 3: Obligation to criminalize

1. Add two new paragraphs to read as follows:

"(...) States Parties shall foster regional cooperation with non-States Parties in order to achieve greater uniformity in the definition, prevention and punishment of international trafficking in persons, as well as in the protection of victims.

"(...) States Parties shall consider facilitating the application of the principle of extraterritoriality in the legal pursuit of crimes relating to trafficking in persons."

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 3

2. Amend paragraph 3 to read as follows:

"3. In appropriate cases and to the extent possible, States Parties shall consider implementing measures, in cooperation with non-governmental organizations and local communities, to provide for the physical, psychological and social recovery of and, when requested, spiritual assistance to victims of crimes covered by this Protocol and, in particular:

"(a) ...;

"(b) ...;

"(c) ...;

"(d) Employment, educational and training opportunities, in a manner appropriate to their age, gender and special needs."

Italy**

[Original: English]

1. Italy would like to strengthen the provisions concerning social assistance to and protection of victims. It is therefore proposed to devote an article to "Protection of human rights and social assistance" and a separate article to "Fair treatment and protection of trafficked persons". A more detailed version of article 5, related to residence status, is also proposed. The Italian proposals incorporate language from the Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).

2. Articles 3 *bis*, 4 and 5 should be amended to read:

* Amendments previously issued in document A/AC.254/L.196.

** Amendments previously issued in document A/AC.254/5/Add.25.

"*Article 3 bis*

"*Protection of human rights and social assistance*

"1. States Parties shall protect the human rights of trafficked persons, as defined in the Universal Declaration of Human Rights[2] and the International Covenant on Civil and Political Rights,[3] and ensure that they may be exercised without discrimination on any ground such as race, colour, sex, language, religion (disability, age, sexual orientation),[4] political or other opinion, national or social origin, property, birth or other status.[5]

"2. In addition to measures adopted pursuant to article 4 of this Protocol, each State Party shall consider providing, in cooperation with non-governmental organizations, as appropriate:

"(a) Safe housing;

"(b) Counselling and information, in the mother tongue of the trafficked persons or in another language they can speak and understand, in particular as regards their legal rights;

"(c) Material, psychological and economic assistance;

"(d) Work, education and training opportunities.

"*Article 4*

"*Fair treatment and protection of trafficked persons*

"1. ...;

"2. Each State Party shall endeavour to provide, as appropriate, before, during and after all criminal, civil or other legal proceedings:

"(a) ...;

"(b) ...;

"(c) Appropriate measures to protect trafficked persons who act as a witness and, where necessary, their families living on its territory;

"(d) A change of identity, where necessary, if the threat is extremely serious.

"3. States Parties are encouraged to develop bilateral and multilateral agreements aimed at protecting trafficked persons and their families in countries of origin, transit and destination.

"4. In addition to measures provided pursuant to article 8 of this Protocol, States Parties shall to the extent possible under their domestic law:

"(a) Provide for the notification of victims, upon their request, of any form of release from custody or detention of persons arrested for or convicted of trafficking;

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[2] General Assembly resolution 217 A (III).

[3] See General Assembly resolution 2200 A (XXI), annex.

[4] Language from article 13 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Certain Related Acts.

[5] Including their status as victims of trafficking, as illegal migrants or prostitutes.

"(b) Develop methods of investigation, detection and gathering of evidence that minimize intrusion into the private life of the trafficked person and are free from gender bias;

"(c) Establish, whenever possible, specialized police and prosecutorial units trained to deal with gender issues and sensitivities of the victim of trafficking, especially children.

"*Article 5*

"*Residence status of trafficked persons*

"1. In addition to measures provided pursuant to article 4 of this Protocol, each State Party shall consider enacting immigration laws or adopting other measures that will grant the trafficked person, in appropriate cases, temporary or permanent residence status, including the possibility of gainful employment.

"2. ... .

"3. A trafficked person shall be given the opportunity to produce evidence in support of a claim that repatriation could seriously endanger his or her life."

Japan

[Original: English]

Article 2 bis: Definitions

Delete subparagraph (b), and add the following at the end of the article (or elsewhere as appropriate):

"Where a child is involved, States Parties shall take into consideration, to the widest extent possible, his or her age, vulnerability, maturity, both physical and mental, family ties and any other elements relevant to the purpose of this Protocol."

Mexico*

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

"1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

"2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable."[6]

* Amendments previously issued in document A/AC.254/5/Add.25.

[6] The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Article 4: Assistance for and protection of victims of trafficking in persons

Title

2. It is proposed that the title of article 4 be replaced with the following: "Compensation and restitution to victims".

3. The following new wording is proposed:

"1. In appropriate cases and to the extent permitted by its domestic law, each State Party:

"(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

"(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

"(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

"(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

"(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

"(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

"(g) Shall provide appropriate housing, education and care for children in governmental custody;

"(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

"2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently."[7]

Article 5: Status of the victim in the receiving State

4. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 8: Border measures

5. It is proposed that the title and text of article 8 be replaced with the following:

[7] Text based on a proposal by France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

"Article 8
"Training

"All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area."

Philippines*

[Original: English]

Article 10: Prevention of trafficking in persons

Paragraph 1

1. The Philippines proposes the following amended text:

"1. Each State Party shall establish comprehensive policies, programmes and other measures."

Paragraph 2

2. The Philippines proposes the following amended text for subparagraphs (a) and (b):

"(a) Undertake, including through Governments, non-governmental organizations, intergovernmental organizations and the private sector, partnerships with communities, especially those at risk of being targeted by traffickers;

"(b) Establish networks for gathering data and promote research, including the compilation of case law on trafficking cases to monitor legal and judicial precedents on trafficking cases internationally;"

Paragraph 3

3. Paragraph 3 should be deleted.

Syrian Arab Republic**

[Original: Arabic]

Article 3: Obligation to criminalize

Paragraphs 1 and 2

Add the words ", subject to their fundamental legal principles," after the word "adopt".

* Amendments previously issued in document A/AC.254/5/Add.25.
** Amendments previously issued in document A/AC.254/5/Add.25.

Thailand

[Original: English]

Article 11: Cooperation with non-States Parties

Thailand proposes to replace article 11 with the following:

"States Parties are encouraged to cooperate with non-States Parties to prevent and punish trafficking in persons and to protect the rights of and care for trafficked persons. To that end, appropriate authorities of each State Party are encouraged to notify, in appropriate cases and when in the best interest of the trafficked person, the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of a non-State Party is present in the territory of the State Party."

European Community*

[Original: English and French]

Article 8: Border measures

1. It is proposed that article 8 be revised to read as follows:

"*Article 8*
"*Border measures*

"1. Without prejudice to international commitments for the free movement of people, States Parties shall strengthen, to the extent possible, border controls as may be necessary to detect and prevent trafficking in persons, including by checking travel or identity documents and, where appropriate, by boarding and inspecting vehicles and vessels.

"2. Without prejudice to article 19 of the Convention, States Parties shall consider intensifying cooperation with border control agencies of other States, in particular by establishing and maintaining direct channels of communication.

"3. States Parties shall take legislative or other appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established under article 3 of this Protocol.

"4. Such measures shall include, where appropriate, the establishment, without prejudice to applicable international conventions, of the obligation that commercial carriers, including any transportation company or the owner or operator of any vessel or vehicle, ascertain that all passengers travelling by land, sea or air are in possession of the travel documents required for legal entry into the receiving State.

"5. ... .

"6. ... .

2. The present proposal seeks to ensure greater consistency with the text of articles 9 and 11 of the Migrants Protocol.

* On behalf of Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden. Amendments previously issued in document A/AC.254/L.197.

Secretariat*

[Original: English]

Article 14: Relation with the Convention

It is proposed to replace article 14 with the following in order to establish a link between the Protocol and the Convention:

"1. This Protocol is supplementary to the United Nations Convention against Transnational Organized Crime.

"2. No State shall become a Party to this Protocol unless it also becomes a Party to that Convention.

"3. The provisions of [articles [...] of] the Convention shall also apply *mutatis mutandis* to this Protocol."

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* Amendment submitted at the request of the Chairman and previously issued in document A/AC.254/L.204.